

**REMARKS**

Applicants respectfully request reconsideration of the instant application in view of the foregoing amendments and the following remarks. Claims 31, 38-41, 55, 61, 65-68, and 115 are *pending*. Claims 1-30, 32-37, 42-54, 56-60, 62-64 and 69-114 have been *previously cancelled* without prejudice or disclaimer. Claims 31, 55, and 115 are *independent*. Applicants submit that the originally filed claims are patentable and reserve the right to pursue the originally filed claims (as well as any claims dependent therefrom) at a later time and/or in one or more continuation application(s).

**Claim Rejections - 35 U.S.C. § 103(a)**

Claims 31, 38-41, 55, 61, 65-68, and 115 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over McCall et al. US Patent No. 6,321,984 (hereafter "McCall"), in view of Infinity Trading Group, from January 9, 1998, infinitytrading.com (hereafter "Infinity") and further in view of "Weather futures bet will give Tucson firms a hedge against loss," Arizona Daily Star, Tucson, Arizona, 5 February 1999 (hereafter "Weather Futures"). Applicants respectfully traverse the Examiner's rejections and submit that a *prima facie* case of obviousness has not been established and that the pending claims are patentably distinct from the cited references, taken alone or in combination, for at least the following reasons.

MPEP § 706.02(j) prescribes that a rejection under 35 U.S.C. § 103 should set forth:

- (i) the relevant teachings of the prior art relied upon,
- (ii) the differences in the claim over the applied references,
- (iii) the proposed modification of the applied references to arrive at the claimed subject matter, and
- (iv) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

Applicants submit that the rejections in the pending Office Action do not establish each of these requirements.

Independent claim 31 recites, *inter alia*,

A processor-enabled method for providing a program price for the purchase of a vehicle fuel, comprising:

...

calculating by a processor a customer-specific, fixed, guaranteed program price a customer is authorized to pay for any qualified fuel purchase from any qualified fuel seller, for a type of vehicle fuel, using customer expected fuel usage data and said finder's fee amount of said program sponsor data, wherein said customer expected fuel usage data includes a customer-specific quantity of fuel to be purchased and a number of months during which the customer is authorized to buy fuel at the customer specific, fixed, guaranteed program price for the type of fuel to be purchased;

...

In the pending rejection, the Examiner alleges

With respect to having and receiving "customer expected usage data" that includes a quantity of fuel to be purchased over a given number of months, "infinity"  
discloses what are known as energy future contracts... The expected quantity of fuel to be purchased is disclosed as the "annual consumption" that the user is going to consume.  
This is decided at before the year actually has occurred. The number of months is over a 12 month period as is indicated by the use of "annual consumption"....

(p. 5, ¶ 2, Office Action; emphasis original)

Applicants respectfully disagree and submit that the Examiner has mischaracterized the claim elements and over-generalized the cited references. Applicants submit that Infinity does not

discuss or render obvious at least the claimed "customer expected fuel usage data", "wherein said customer expected fuel usage data includes a customer-specific quantity of fuel to be purchased and a number of months during which the customer is authorized to buy fuel at the customer specific, fixed, guaranteed program price for the type of fuel to be purchased."

Infinity discusses:

Full-service fuel oil distributors are active users of the heating oil futures and options contracts. Typically, a full-service dealer will protect a portion of his winter delivery commitments through the purchase of Exchange-traded futures and options. This enables a fuel oil dealer to offer a "guaranteed" delivery price, where customers are assured a set price for their annual consumption of fuel prior to the beginning of the winter season. The fuel oil dealer hedges these guaranteed price agreements by purchasing Exchange futures or options contracts, or by purchasing a wholesale supply deal which ties terminal cash prices to Exchange futures prices.

(p. 2, ¶ 3, Infinity)

Applicants respectfully submit that the Examiner's cited portions of Infinity, for example, "customers are assured a set price for their annual consumption of fuel prior to the beginning of the winter season" as cited above, makes no mention of at least the claimed "expected fuel usage data." Instead, Infinity simply discuss an "annual consumption of fuel", which could be a specified total amount available at the end of a year, ad hoc commitments of fuel consumption etc., but it does not discuss or render obvious "customer expected fuel usage data." Moreover, Applicants submit that the Examiner has improperly over-generalized Infinity and thus mischaracterized its original meaning. For example, the sentence in Infinity preceding the Examiner's citation, recites "a full-service dealer will protect a [non-specified] portion of his winter delivery commitments through the purchase of Exchange-traded futures and options." Applicants submit that the "portion of ... winter delivery commitments" in Infinity indicates no particularly identifiable value, much less an "expected fuel data."

As claims 38-41 are directly or indirectly dependent from independent claim 31, Applicants submit that these claims are patentably distinct from the cited references for at least similar reasons as discussed above identifying deficiencies in the cited references with respect to independent claim 31. Although of different scope than independent claim 31, Applicants respectfully submit that independent claim 55 (and claims 61 and 65-68 dependent therefrom) recites the claim language "customer expected fuel usage data...wherein said customer expected fuel usage data includes a customer-specific quantity of fuel to be purchased, a number of months during which the customer is authorized to buy fuel at the customer-specific, fixed guaranteed program price and a type of fuel to be purchased", and thus these claims are patentably distinct from the cited references as well. Accordingly, Applicants respectfully request reconsideration and withdrawal of these grounds of rejections with regard to claims 38-41, 55, 61, 65-68.

In the pending rejection, the Examiner further alleges that "For claim 115, ..., the claimed language of "on establishment of an affinity relationship between the program sponsor and the customer", this is taken as being directed to non-functional descriptive material". Applicants respectfully disagree and submit that independent claim 115 recites, *inter alia*:

A processor-enabled method for providing a program price for the purchase of a vehicle fuel, comprising:

...  
receiving program sponsor data, wherein said program sponsor data includes an amount of a finder's fee paid by a program sponsor to a program operator on establishment of an affinity relationship between the program sponsor and the customer;

...

Applicants submit that the claim language "said program sponsor data includes an amount of a finder's fee paid by a program sponsor to a program operator on establishment of an affinity relationship between the program sponsor and the customer" further details the claimed

"receiving program sponsor data", and is not directed to merely descriptive or intended use material. As such, also in view of the deficiencies identified in the cited references with regard to independent claim 31, Applicants respectfully request reconsideration and withdrawal of this basis of rejections with regard to independent claim 115.

### **CONCLUSION**

Consequently, the references cited by the Office Action do not result in the claim elements, there was/is no reason, rationale or motivation (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)) for such a combination of references, and the claimed inventions are not admitted to be prior art. Thus, the Applicants respectfully submit that the supporting remarks and claimed inventions, claims 31, 38-41, 55, 61, 65-68 and 115 overcome all rejections and/or objections as noted in the Office Action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicants believe that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed here or in previous amendments/responses, Applicants assert that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements,

and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicants do not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicants respectfully request allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17209-075.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17209-075

Respectfully submitted,  
CHADBOURNE & PARKE, L.L.P.

Dated: August 10, 2009

By: /Walter G. Hanchuk/  
Walter G. Hanchuk Reg. No. 35,179

Chadbourne & Parke LLP  
30 Rockefeller Plaza  
New York, NY 10112  
212-408-5100 Telephone  
212-541-5369 Facsimile